

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

FRANCIS LEON HARVEY,

Plaintiff,

v.

Civil Action No. 2:08-cv-00107-MCA-CG

UNITED STATES OF AMERICA,

Defendant.

ORDER

THIS MATTER is before the Court on *Plaintiff's Application to Enter Default Judgment* [96] pursuant to Rule 55(d) of the Federal Rules of Civil Procedure. The Court has considered Plaintiff's application, Defendant's response, the relevant case law, and is otherwise fully advised in the premises.

"[F]ederal law favors the disposition of cases on the merits, and, as a result, a default judgment is a drastic sanction that should be employed only in an extreme situation." *Stewart v. Astrue*, 552 F.3d 26, 28 (1st Cir. 2009) (Internal quotation marks and citation omitted). A claimant seeking a default judgment against the United States bears the heavy burden to establish "a claim or right to relief by evidence that satisfies the court." *Jorden v. National Guard Bureau*, 877 F.2d 245, 251 n.23 (3rd Cir. 1989) (quoting Fed. R. Civ. Proc. 55(d)). "(W)hen the government's default is due to a failure to plead . . . the court typically

either will refuse to enter a default or, if a default is entered, it will be set aside.” *Mason v. Lister*, 562 F.2d 343, 345 (5th Cir. 1977) (Internal quotation marks and citation omitted).

Defendant was served with a copy of Plaintiff’s complaint and summons on February 28, 2008 [5] and filed its answer sixty-one days later on April 29, 2008. [6] Although Defendant’s answer was filed one day late under Rule 12(a)(2) of the Federal Rules of Civil Procedure, Plaintiff never objected to the answer as untimely or alleged any prejudice as a result thereof. Accordingly, this Court finds that *Plaintiff’s Application to Enter Default Judgment* should be **DENIED**.

The Application is hereby **DENIED**.

SO ORDERED this 22nd day of April, 2011, in Albuquerque, New Mexico.


M. CHRISTINA ARMIJO
United States District Judge